

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re: JDS UNIPHASE CORPORATION
SECURITIES LITIGATION

No. C-02-1486 CW (EDL)

**ORDER FOLLOWING JUNE 9, 2006
DISCOVERY CONFERENCE**

This document relates to ALL ACTIONS

On June 9, 2006, the Court held a discovery conference in this case on two issues: (1) production in searchable format compatible with Concordance of metadata, text and load files for the departmental share drives; (2) the existence of inventories of certain back-up tapes. For the reasons stated at the hearing, the Court issues the following Order:

1. Defendant JDSU stated at the hearing that the departmental share drives have been burned to storage disks that would have to be restored in order to produce the contents of the drives, including the metadata, text and load files. The restoration would cost between \$25,200 and \$35,650. Janes Decl. ¶¶ 4-6. The Court finds that the metadata, text and load files for the share drives may have some relevance and so should be produced. The Court's preferred method for production of the information is for Defendants JDSU to produce the storage disks to Lead Plaintiff to restore to usable form at Lead Plaintiff's own expense, which Lead Plaintiff believes may be less than the estimate provided to Defendant. The Court indicated that it is willing to enter any appropriate order to prevent against privilege waiver. To that end, Defendants JDSU shall examine the contents of the disks for privileged documents, and shall inform the Court no later than June 20, 2006 of the results of that privilege review and

United States District Court

For the Northern District of California

1 whether Defendants JDSU will give the disks to Lead Plaintiff subject to a court order
2 protecting Defendants JDSU against any privilege waiver. Alternatively, if the disks are not
3 handed over to Lead Plaintiff, Defendants JDSU shall restore the metadata, text and load
4 files and produce that information to Lead Plaintiff. In that event, the cost of restoration
5 shall be divided evenly between Lead Plaintiff and Defendants JDSU.

6 2. In response to the Court's May 18, 2006 Order, Defendants JDSU produced existing
7 inventories or lists of the contents of the back up tapes. Lead Plaintiff now seeks indices or
8 catalogs for the back up tapes, or an explanation of why those indices or lists are missing.
9 Defendants JDSU state that they do not know where the indices or catalogs are without
10 restoring all back up tapes, and that indices do not exist for all tapes. This information is of
11 some relevance, but not sufficient relevance to justify much burden. Lead Plaintiff may
12 propound an interrogatory to Defendants JDSU seeking an explanation of why some back up
13 tapes have indices and others do not. If Lead Plaintiff can show that the response to this
14 interrogatory is insufficient, Lead Plaintiff may be entitled to more discovery on that issue.

15 3. With respect to the ERP database systems, Lead Plaintiff and its expert shall provide an
16 explanation to Defendants' counsel of exactly what additional information it needs about the
17 databases that would be sufficient for Lead Plaintiff to make an informed decision about
18 whether and how best to examine the databases. The relevant experts in this case shall
19 discuss this information directly with each other, with the lawyers if the parties wish, and
20 Defendants' expert shall make disclosures about the databases, including the architecture and
21 the ways in which information can be provided to Lead Plaintiff, that are necessary to inform
22 Lead Plaintiff's decision.

23 IT IS SO ORDERED.

24 Dated: June 14, 2006

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge

26
27
28